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United States District Court
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P R O C E E D I N G S

THE CLERK: The Court calls Criminal Action 21-10342, United States v. Steve Waithe. Could counsel please identify themselves.

MR. DEITCH: Adam Deitch on behalf of the United States. Good morning, your Honor.

MS. PEACHY: Good morning. Jane Peachy for Steve Waithe.

THE COURT: Thank you. You all may be seated.

09:50 Ms. Peachy, why are we here?

MS. PEACHY: Your Honor, Mr. Waithe wishes to change his plea to all counts in the indictment. We do not have a plea agreement.

THE COURT: Thank you.

Do you all know that I believe Mr. Waithe's father is on Zoom as well as several of the victims? Is that right?

MR. DEITCH: I believe just a few, yes, your Honor.

THE COURT: And they were all notified under the Victims Act?

09:50 MR. DEITCH: They were.

THE COURT: Okay, Maryellen.

THE CLERK: Sir, could you please stand and then raise your right hand.

(Defendant duly sworn.)

THE CLERK: As to Counts 1 through 12, wire fraud, all

1 in violation of Title 18, U.S.C., Section 1343, Count 13,
2 cyberstalking, all in violation of Title 18, U.S.C.,
3 Section 2261(a)(2)(B), and Count 14, conspiracy to commit
4 computer fraud, all in violation of Title 18, U.S.C.,
5 Section 371, and Count 15, computer fraud, aiding and abetting,
6 all in violation of Title 18, U.S.C., Section 1030(a)(4) and
7 (2), do you now wish to change your plea?

8 THE DEFENDANT: Yes.

9 THE COURT: And how do you plead to Counts 1 through
09:51 10 12, Count 13, Count 14, and Count 15, guilty or not guilty?

11 THE DEFENDANT: Guilty.

12 THE COURT: Thank you. You may take the stand.

13 THE CLERK: And then, in order for people to hear us,
14 they said you need to speak into the mics because they can't
15 hear us on the other end.

16 (Defendant takes the witness stand.)

17 THE COURT: Good morning.

18 THE DEFENDANT: Good morning.

19 THE COURT: Now, I want to make sure that that mic is
09:52 20 on and that people can hear.

21 THE CLERK: You can pull it in. Also it moves, the
22 mic.

23 THE COURT: Sir, do you understand that you are now
24 under oath, and if you answer any of my questions falsely, your
25 answers can later be used against you in a prosecution for

1 perjury or making a false statement?

2 THE DEFENDANT: I do, your Honor.

3 THE COURT: What is your full name?

4 THE DEFENDANT: Steve Leon Waithe, Junior.

5 THE COURT: Do you go by any nicknames?

6 THE DEFENDANT: No, your Honor.

7 THE COURT: Do you have any false names that you use
8 on the Internet or social media or anywhere?

9 THE DEFENDANT: I have my username.

09:53 10 THE COURT: What is that?

11 THE DEFENDANT: Mister Hop Skip Jump was my Instagram
12 name.

13 THE COURT: Where were you born?

14 THE DEFENDANT: Baltimore, Maryland, in GBMC Hospital.

15 THE COURT: All right, so Long Island. You're a New
16 Yorker? No. What did you say?

17 THE DEFENDANT: Baltimore, Maryland.

18 THE COURT: Oh, Baltimore. All right, I didn't
19 understand. Baltimore. How old are you.

09:53 20 THE DEFENDANT: I'm thirty years old.

21 THE COURT: How far did you go in school?

22 THE DEFENDANT: A bachelor's degree.

23 THE COURT: From where?

24 THE DEFENDANT: Penn State University.

25 THE COURT: So I'm assuming you can read and write,

1 right?

2 THE DEFENDANT: Yes.

3 THE COURT: So you read the indictment?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: And do you understand you're pleading
6 guilty without a plea agreement?

7 THE DEFENDANT: I do, your Honor.

8 THE COURT: Do you have any mental health issues?

9 THE DEFENDANT: No, your Honor.

09:53 10 THE COURT: Do you have any physical issues?

11 THE DEFENDANT: No, your Honor.

12 THE COURT: I know you're incarcerated right now, but
13 I'm going to ask anyway: Have you taken any unlawful drugs
14 within the last 48 hours?

15 THE DEFENDANT: No, your Honor.

16 THE COURT: Are there any prescriptions that you
17 should be on that you're not taking?

18 THE DEFENDANT: No, your Honor.

19 THE COURT: So how do you feel today?

09:54 20 THE DEFENDANT: I feel great.

21 THE COURT: Have you been satisfied with the
22 representation of your attorney?

23 THE DEFENDANT: I have, your Honor.

24 THE COURT: Do you feel as if she's answered all your
25 questions?

1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Do you feel as if she's pressuring you
3 into pleading guilty?

4 THE DEFENDANT: No, your Honor.

5 THE COURT: Did anyone make you any promises other
6 than -- well, did anyone make you any promises?

7 THE DEFENDANT: No, your Honor.

8 THE COURT: Is there anything that was agreed upon by
9 counsel one way or another?

09:54 10 MS. PEACHY: No, your Honor, no agreement.

11 THE COURT: Not even a plea agreement, anything that's
12 been agreed upon?

13 MS. PEACHY: No.

14 MR. DEITCH: No, your Honor.

15 THE COURT: Has anyone threatened you in any way to
16 get you to plead guilty?

17 THE DEFENDANT: No, your Honor.

18 THE COURT: I want to ask the government, what are the
19 penalties that can be imposed? Thank you.

09:54 20 MR. DEITCH: Of course, your Honor. For wire fraud in
21 Counts 1 through 12, the maximum possible penalty is 20 years
22 of incarceration, a fine of up to \$250,000, three years of
23 supervised release, and a \$100 special assessment. For
24 cyberstalking, the maximum possible penalty is five years
25 incarceration, a fine of up to \$250,000, three years of

1 supervised release, and a \$100 special assessment. For
2 computer fraud and conspiracy to commit computer fraud, the
3 maximum possible penalty is five years of incarceration, a fine
4 of up to \$250,000, three years of supervised release, and a
5 \$100 special assessment. That special assessment is per count.

6 THE COURT: Before you sit down, what is the
7 Sentencing Guideline range tentatively?

8 MR. DEITCH: Sure, your Honor. I think there is a
9 dispute between the parties in the calculation, but the
09:55 10 government's back-of-the-envelope calculation is 37 to 46
11 months.

12 THE COURT: And what's your back-of-the-envelope?

13 MS. PEACHY: 27 to 33 months.

14 THE COURT: Is he Category 1?

15 MS. PEACHY: Yes, no record.

16 THE COURT: Do you understand that there is a debate
17 about the Sentencing Guidelines that you just heard?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: And the Probation Department will take a
09:56 20 look at the offense conduct and will give me a presentence
21 report. Do you understand that?

22 THE DEFENDANT: Yes, I do, your Honor.

23 THE COURT: And in that report will be a proposed
24 Sentencing Guideline range. Do you understand?

25 THE DEFENDANT: Yes, your Honor.

1 THE COURT: We will then have a sentencing hearing,
2 and I will as a matter of law make that calculation. Do you
3 understand?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: And then what will happen is, your
6 attorney can ask for a variance and the government can ask for
7 a variance. Do you understand that?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: The request can be up or the request can
09:56 10 be down. Do you understand that?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: I do believe that -- I don't know if any
13 of them will choose to do that, but the victims will have a
14 right to make a statement, and you'll have a right to make a
15 statement. Do you understand that?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: And then when I impose a sentence, you
18 will have the right to appeal that sentence. Do you understand
19 that?

09:56 20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: But you can't at that point withdraw your
22 guilty plea. Do you understand?

23 THE DEFENDANT: Yes.

24 THE COURT: I want to go through the important impacts
25 that a felony conviction can have on you. First of all, it

1 will deprive you of the right to vote, to serve on juries, to
2 hold public office, but also there are lots of hidden dangers.
3 It could affect, I don't know, it's changing, but the right to
4 get certain student loans, the right to get subsidized housing,
5 certain licensings. Do you understand it can affect you that
6 way as well?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: And similarly I want to go through all the
9 rights you're giving up by pleading guilty, and let me start
09:57 10 with the most basic one. Do you understand you have a right to
11 a jury trial?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Do you understand a jury would have to
14 unanimously agree that you're guilty beyond a reasonable doubt
15 before you can be convicted?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: Do you understand that it has to be twelve
18 out of twelve jurors before you can be convicted?

19 THE DEFENDANT: Yes, your Honor.

09:57 20 THE COURT: Do you understand that the government
21 bears the burden of proof beyond a reasonable doubt and it
22 never shifts to you?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: Do you understand the burden of proof
25 beyond a reasonable doubt is really high?

1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: And do you understand that you're giving
3 up the presumption of innocence?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Do you understand that if you were to go
6 to trial, I would appoint counsel for you like the excellent
7 lawyer that you have? Do you understand that?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: And you wouldn't have to pay for a lawyer
09:58 10 at all?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: And do you understand that you could
13 subpoena witnesses on your own behalf and have your attorney
14 cross-examine the government witnesses? Do you understand
15 that?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: Do you understand that you wouldn't have
18 to testify against yourself at trial?

19 THE DEFENDANT: Yes, your Honor.

09:58 20 THE COURT: On the other hand, you could testify on
21 your own behalf if you chose to do that. Do you understand
22 that?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: And understanding all these very important
25 rights -- and I always like to stress that right to a jury

1 trial because it's sort of hard to get twelve people to agree
2 to proof beyond a reasonable doubt -- do you understand you're
3 giving up those rights?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: So I'm now going to ask the government to
6 state the evidence. There are so many counts, I don't know
7 whether we should just -- is there a separate statement of fact
8 applying to all of them, or is it basically the same statement
9 of facts?

09:59 10 MR. DEITCH: It covers each category of offense
11 individually.

12 THE COURT: All right, so I'm not as familiar with it,
13 so if there's a point to stop and then take a plea on that
14 count, let me know, all right?

15 MR. DEITCH: All right. Thank you, your Honor. At
16 trial, the government would demonstrate that starting in late
17 2018, the defendant took the first steps --

18 THE COURT: Okay, now, here's my concern: I want the
19 people to hear online. I don't know if you're far enough. I
09:59 20 don't care if you sit down. Just you need to speak into the
21 mic because otherwise there could be some --

22 MR. DEITCH: Can you hear me now?

23 THE COURT: I can hear.

24 THE CLERK: I can check and make sure everybody can
25 hear.

1 THE COURT: They can? All right, go ahead. I'm
2 sorry.

3 MR. DEITCH: At trial, the government would
4 demonstrate that starting in late 2018, the defendant took the
5 first steps in a series of schemes in which he attempted, at
6 times unsuccessfully and at times with great success, to steal
7 explicit photos of young women and trick young women into
8 sending photos to him under false pretenses. First, the
9 evidence would show that when he was a track coach at
10:00 10 Northeastern University, the defendant requested the cellphones
11 of female student athletes under the pretense of filming them
12 at practice and at meets. Instead of or in addition to filming
13 them, the evidence would show that he also went through their
14 cellphones into the photos they'd saved, located photos he was
15 interested in, and covertly sent them to himself via the Direct
16 Message feature in Instagram. To conceal his conduct, he
17 deleted the sent items from the victims' Instagram accounts.

18 Approximately a year later when he was no longer at
19 Northeastern, the evidence would show the defendant began
10:00 20 registering dummy or anonymized Instagram accounts, and that
21 using those accounts, he contacted prospective victims,
22 including some of the same Northeastern track and field student
23 athletes from whom he had stolen photos, and claimed that he
24 was a Good Samaritan who had found those same explicit photos
25 on the Internet.

1 THE COURT: But was he using his own name or someone
2 else?

3 MR. DEITCH: He was using anonymized accounts, not in
4 his own name, your Honor. Using those accounts, he then sent
5 the victims photos of themselves, including some of the photos
6 he had stolen from the Northeastern students' phones. He
7 attempted to extort additional photos of the victims by telling
8 them that he could help them remove the photos from the
9 Internet by conducting a so-called "reverse image search," and
10:01 10 that the best way to do that would be for the young women to
11 send him any additional explicit photos they may have. Victims
12 under that scheme did not send him additional explicit photos.

13 Very specifically, the evidence would show that the
14 defendant sent the electronic messages listed in Counts 1
15 through 12 of the indictment; specifically the messages listed
16 on February 13, 2020, June 12, 2020, June 30, 2020, July 26,
17 2020, and July 27, 2020. These messages were sent in
18 furtherance of the defendant's scheme to defraud victims for
19 the purpose of obtaining money and property by means of
10:02 20 materially false and fraudulent pretenses, representations, and
21 promises, and the messages listed in each of Counts 1 through
22 12 were transmitted by means of wire communications in
23 interstate commerce for the purpose of executing the scheme to
24 defraud. The defendant's conduct is consistent with that as
25 described in Paragraphs 5 through 21 of the indictment.

1 Your Honor, that's the end of the factual basis for
2 Counts 1 through 12.

3 THE COURT: I'm sorry, Ms. Peachy. I didn't ask you
4 to do this, but do you have the indictment right with you?

5 MS. PEACHY: Yes, I do.

6 THE COURT: I thought I saw it.

7 Did you disagree with anything the government said
8 about the wire fraud counts in Counts 1 through 12?

9 THE DEFENDANT: No, your Honor.

10:02 10 THE COURT: Did you send the messages -- and they're
11 right in front of you -- on February 13, June 12, June 30,
12 July 26, and July 27, 2020? Did you send those messages?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: All right, so do you plead guilty
15 knowingly, freely, and voluntarily, from in or about February,
16 2020, through in or about April, 2021, in the District of
17 Massachusetts and elsewhere, that you, Steven Waithe, having
18 devised and intending to devise a scheme and artifice to
19 defraud, and for obtaining money and property by means of
10:03 20 materially false and fraudulent pretenses, representations, and
21 promises, did transmit and cause to be transmitted by means of
22 wire communications, in interstate and foreign commerce,
23 writings, signs, signals, pictures, and sounds for the purpose
24 of executing the scheme to defraud, as set forth in Counts 1
25 through 12? And I won't read each one of the messages. Do you

1 plead guilty knowingly, freely, and voluntarily?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: All right, so now we're going to move on
4 to cyberstalking.

5 MR. DEITCH: Yes, your Honor, with respect to
6 cyberstalking the evidence at trial would show that the
7 defendant utilized fake Instagram accounts and anonymized phone
8 numbers to engage in a pattern of harassment and intimidation
9 to cyberstalk at least one victim from in or about June of 2020
10:04 10 through in or about October of 2020. In the course of that
11 conduct, he sent messages with the intent to harass and
12 intimidate both the victim and/or her significant other.
13 Messages to the victim included explicit photos that the
14 defendant had stolen from the victim's phone when she was on
15 the track and field team at Northeastern.

16 The messages were sent using interactive computer
17 systems, electronic communication systems, and electronic
18 systems of interstate commerce. This conduct caused, attempted
19 to cause, and/or would be reasonably expected to cause
10:04 20 substantial emotional distress to the victim, who's identified
21 in the indictment as Victim 6.

22 THE COURT: Like, what did he say? Do you know?

23 MR. DEITCH: I'll identify the paragraph in the
24 indictment, your Honor.

25 THE COURT: It has to be enough to support intent to

1 harass and intimidate, right?

2 MR. DEITCH: Indeed, and I'll note for the record,
3 your Honor, that the behavior in furtherance of the
4 cyberstalking is enumerated in Paragraphs 22 through 29 in the
5 indictment. They included sending photos and saying, "Do these
6 look familiar? Please let me ASAP." They included additional
7 photos being sent to the victim and/or the victim's boyfriend.
8 "Is this you?" And in particular in Paragraph 27 of the
9 indictment, the defendant stated, "I want to make you aware
10:05 10 that someone hacked your girlfriend's Snapchat account and will
11 leak it soon. I need your help to assure this doesn't happen."

12 The government submits the evidence would show that
13 the conduct was a pattern of harassing behavior as to a
14 combination of both Victim 6 and Victim 6's significant other.

15 THE COURT: Do you disagree with anything the
16 government just stated?

17 THE DEFENDANT: No, your Honor.

18 THE COURT: So do you plead guilty to cyberstalking --
19 that is, from in or about June, 2020 -- and I guess this
10:06 20 involves primarily Victim 6 and her boyfriend. Or how's it
21 charged?

22 MR. DEITCH: The victim of the --

23 THE COURT: Actually it's charged as Victim 6, so that
24 must just be the woman.

25 MR. DEITCH: It is, your Honor.

1 THE COURT: Okay. That from on or about June, 2020,
2 to on or about October, 2020, in the District of Massachusetts
3 and elsewhere, that you did, with intent to harass and
4 intimidate another person, use interactive computer services,
5 electronic communications services, and electronic
6 communication systems of interstate commerce -- specifically
7 text messages, social media direct messages, emails and online
8 postings -- to engage in a course of conduct that caused,
9 attempted to cause, and would be reasonably expected to cause
10:07 10 substantial emotional distress to Victim 6, all in violation of
11 18 U.S. Code, Section 2261(a)(2)(B)? Do you plead guilty
12 knowingly, freely, and voluntarily?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: All right, thank you. And we now move on
15 to Count 14.

16 MR. DEITCH: I'll group 14 and 15 together, your
17 Honor, if that's okay. That's the conspiracy to commit
18 computer fraud and the substantive computer fraud.

19 THE COURT: Sure.

10:07 20 MR. DEITCH: And to those crimes, your Honor, the
21 evidence at trial would demonstrate that in or about May of
22 2020, the defendant began a scheme to conspire with others on
23 the Internet to hack into the Snapchat accounts of young women,
24 many of whom he knew in his real life. For example, in or
25 about May of 2020, the defendant posted on a website designed

1 for the sharing of so-called "leaked photos" a request for
2 information on, quote, "how to hack Snapchat." By October of
3 2020, the defendant had communicated with the individual
4 identified in the indictment as CC-1 about hacking into
5 specific Snapchat accounts. He sent CC-1 information about
6 victims, including the usernames and phone numbers of
7 approximately fifteen women. At the defendant's direction,
8 CC-1 successfully obtained access to a victim's Snapchat
9 account -- again, Victim 6 -- and sent the defendant a link to
10:08 10 a cloud storage folder containing photos that had been stolen
11 from Victim 6's Snapchat account. When notified of the
12 successful hack, the defendant messaged CC-1, quote, "Hell,
13 yeah, man. Keep it coming. I'll pay you gladly. How do you
14 accept money?"

15 In furtherance of the conspiracy, the evidence would
16 show that on February 3, 2020, the defendant sent a payment to
17 a Google Pay account associated with CC-1. In the end, the
18 evidence would show that the defendant conspired with others to
19 hack or attempt to hack the Snapchat accounts of dozens of
10:08 20 additional victims.

21 In short, your Honor, the evidence at trial would
22 demonstrate that the defendant, through his fraudulent schemes,
23 successfully obtained hundreds of photos from victims, all of
24 whom were young women and many of whom the defendant knew
25 personally. The evidence at trial would show that there were

1 at least fifty young women across the country who have been
2 victimized by this conduct.

3 THE COURT: Five-zero?

4 MR. DEITCH: Five-zero, over five-zero. Thank you,
5 your Honor.

6 THE COURT: Thank you. Do you disagree with anything
7 the government said?

8 THE DEFENDANT: No, your Honor.

9 THE COURT: So with respect to conspiracy to commit
10:09 10 computer fraud, do you plead guilty that on or about October 3,
11 2020, in the District of Massachusetts and elsewhere, that you
12 conspired with CC-1 and others, known and unknown to the grand
13 jury, to commit offenses against the United States -- to wit,
14 computer intrusion -- in violation of 18 U.S. Code,
15 Section 1030(a)(4); that is, to knowingly access a protected
16 computer without authorization with intent to defraud, and by
17 means of such conduct, to further the intended fraud and obtain
18 a thing of value, all in violation of 18 U.S. Code,
19 Section 371? Do you plead guilty knowingly, freely, and
10:10 20 voluntarily?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: And, finally, with respect to Count 15,
23 computer fraud/aiding and abetting, do you plead guilty to on
24 or about October 3, 2020, in the District of Massachusetts and
25 elsewhere, that you together with CC-1, and others known and

1 unknown to the grand jury, did knowingly access a protected
2 computer without authorization with intent to defraud --

3 And that's Victim 6, right?

4 MR. DEITCH: Yes.

5 THE COURT: -- with intent to defraud, and by means of
6 such conduct, did further the intended fraud and obtain a thing
7 of value -- to wit, nude and semi-nude images of Victim 6 --
8 all in violation of 18 U.S. Code, Section 1030(a)(4) and (2)?
9 Do you plead guilty knowingly, freely, and voluntarily?

10:10 10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: And there's a forfeiture allegation. What
12 are we talking about?

13 MR. DEITCH: A variety, your Honor, of electronic
14 devices seized from the defendant.

15 THE COURT: Is there any dispute about that?

16 MS. PEACHY: No.

17 THE COURT: Do you understand that a lot of computer
18 equipment will be forfeited?

19 THE DEFENDANT: Yes, your Honor.

10:11 20 THE COURT: Thank you. So I find your plea is knowing
21 and voluntary, supported by an independent basis in fact
22 concerning each of the essential elements, and I accept it.
23 You can step down. Thank you.

24 (Defendant returns to counsel table.)

25 THE COURT: Do we have a date for sentencing?

1 THE CLERK: Yes, Judge. We have March 6 at 2:30.

2 THE COURT: Okay. Now, have you been in touch with
3 the victims, or is your victim -- are they going to come?

4 MR. DEITCH: Your Honor, yes. I would expect to block
5 off a bit of time for sentencing. The government has
6 indicated, and will formally put the defendant on notice, the
7 government will be seeking an upward departure from the
8 Guidelines. We expect multiple victims to exercise their right
9 to speak at sentencing.

10:11 10 THE COURT: Where do they all live? Here's my issue,
11 which is, sentencings are supposed to be fully public events.
12 So while I certainly allowed people to attend the plea colloquy
13 by Zoom to accommodate them, and, of course, Mr. Waithe's
14 father, I think it makes -- I'm torn about whether I should do
15 that at sentencing.

16 MR. DEITCH: Understood, your Honor, and I can give it
17 some additional thought. I think certainly for victims who
18 wish to speak, I understand the Court's hesitancy for them not
19 to be present physically. For those who opt not to speak --

10:12 20 THE COURT: Oh, if they don't want to speak, that's
21 fine, but if they speak, it probably should be part of a public
22 proceeding.

23 MR. DEITCH: Understood.

24 THE COURT: And, of course, if they don't want to
25 speak at all, they can submit a written statement, which I do

1 read.

2 MR. DEITCH: Of course.

3 THE COURT: And you often, or not you, but the
4 government often refers to it in its statement. So I think the
5 same -- I don't know -- if I remember correctly, Mr. Waithe is
6 from, as he said, Baltimore area -- whether his family would
7 want to come up.

8 MS. PEACHY: They are. They're going to be here in
9 person for the sentencing hearing, your Honor.

10:12 10 THE COURT: Okay, the public has great interest in
11 that, perhaps the press, but I want to have a public
12 proceeding. And so if any victims don't want to attend and
13 don't want to present orally, I will try and do Zoom for them,
14 but if they want to present, they should come here.

15 MR. DEITCH: Understood.

16 THE COURT: I think that's the best way.

17 Now, the next thing, there's a debate over the
18 Guidelines, put aside the upward departure issue. What's the
19 debate? Is there something that is a factual issue that I need
10:13 20 an evidentiary hearing on?

21 MR. DEITCH: I think there are two hang-ups, and from
22 the government's perspective, neither are evidentiary. One is
23 the two-level increase for use of a means of identification.
24 The government's position, at least at present, is, the
25 defendant's use of usernames, phone numbers and other

1 identifying information of victims in order to further his
2 fraud and conspiracy constitute sufficient means of
3 identification for that enhancement.

4 The other is a two-level increase for his aggravating
5 role in the conspiracy, as he was directing one and actually
6 more than one co-conspirators, in furtherance of the conspiracy,
7 to hack into the Snapchat accounts. So I think those are more
8 legal issues than factual.

9 THE COURT: Well, not always. I just have to warn
10:14 10 you. I think the government likes that, but I often can't tell
11 what someone's role in the conspiracy is based just on this,
12 unless you have something that makes that clear, especially
13 since he apparently offered money. Did it ever get paid? I
14 mean, you'd have to do -- let me just say this: If you plan on
15 having an evidentiary hearing and you care enough, you need to
16 let us know because I need to block time.

17 MR. DEITCH: So if Ms. Peachy is open to it, we'll
18 discuss the disagreement, and certainly, if necessary, the
19 government will ask for an evidentiary hearing because
10:14 20 especially with respect to his role, his aggravating role,
21 that's something the government would demonstrate.

22 THE COURT: This is not that case, but I often find it
23 very difficult in a drug conspiracy to actually find out where
24 everybody is, and sometimes it's crystal clear, but a lot of
25 times it really isn't. So I don't know this case, and you're

1 just going to have to block time if you plan on introducing a
2 witness.

3 MR. DEITCH: Understood.

4 THE COURT: And so I'm going to block an hour.

5 Ms. Peachy, do you know of any witnesses you might be calling
6 or any such thing, or is this mostly going to be briefing?

7 MS. PEACHY: I think it's mostly going to be briefing,
8 your Honor, and I do anticipate that there probably won't be
9 any factual disputes, but it's just whether legally these
10:15 10 Guideline enhancements apply. And I would just point out as
11 well that part of the dispute is that if Mr. Waithe is found to
12 be an organizer or a leader in a conspiracy, then he wouldn't
13 get the benefit of the downward departure for zero-point
14 offenders.

15 THE COURT: Does that apply simply to a supervisor?

16 MS. PEACHY: Correct.

17 THE COURT: All right, so anyone who gets that --

18 MS. PEACHY: Anyone who gets that role enhancement
19 cannot get the zero-point offender departure. So that's the
10:16 20 universe of --

21 THE COURT: I see, that's what creates the incentive
22 for you.

23 All right, so, Maryellen, I think we should block a
24 couple of hours. The more you're talking, the more I'm
25 thinking that there's a big issue here.

1 MR. DEITCH: Your Honor, the government can be in
2 touch with Ms. Molloy about the number of victims who expect to
3 exercise their right to speak because obviously that will play
4 a role. There's I think fifty-two identified victims. I don't
5 know how many of them will want to be here and want to address
6 the Court, but I can let the Court know well in advance.

7 THE COURT: Oh, you think even half of that might want
8 to show?

9 MR. DEITCH: I don't know. You know, some victims
10:16 10 have been very actively involved in the case. Others have sort
11 of taken a step back. I think the conduct has affected the
12 victims in very different ways.

13 THE COURT: Is there any restitution involved?

14 MR. DEITCH: So we're working on that, your Honor. I
15 think it's not going to be an extraordinary amount, but I do
16 know some victims have had and occurred costs relating to
17 therapy as a result of the defendant's conduct, and that at a
18 minimum is something that we want to get information about.

19 THE COURT: Let me tell you what I hate but I can't
10:17 20 always avoid: We go through the whole sentencing. We have the
21 sentencing, we do it. He's -- where is he, at Wyatt or
22 Plymouth or someplace like that? And then I have to wait
23 90 days to have a restitution battle. So I suggest that you
24 try and organize an agreed-upon amount, if any, for that day,
25 and if there's a dispute for that day, so that he can go

1 wherever he's going to go and not get stuck here, no
2 programming, no nothing.

3 MR. DEITCH: Understood, your Honor.

4 THE COURT: And just how long has he been
5 incarcerated? In other words, if I go with your calculation --

6 MS. PEACHY: Fourteen months, almost fourteen months
7 at this point.

8 THE COURT: And then by then, it will be 17 months, so
9 under no theory am I backing up against --

10:18 10 MS. PEACHY: Correct.

11 THE COURT: Is that right? Okay, good. That's
12 wonderful. Okay, well, I will see you in March and look
13 forward to hearing from you, and I'm going to block two hours,
14 and if you don't need it, would you let us know so we can -- if
15 you come to some resolution on the matter, it would be very
16 useful.

17 MR. DEITCH: Will do, your Honor. Thank you.

18 THE COURT: Where is CC-1, I mean, generally speaking,
19 in Boston or somewhere else?

10:18 20 MR. DEITCH: Definitely in Boston. I don't know where
21 he is right now.

22 THE COURT: Okay, thank you. Bye-bye. Thank you.

23 MS. PEACHY: Thank you, your Honor.

24 THE CLERK: All rise.

25 (Adjourned, 10:18 a.m.)

C E R T I F I C A T E

UNITED STATES DISTRICT COURT)
DISTRICT OF MASSACHUSETTS) ss.
CITY OF BOSTON)

I, Lee A. Marzilli, Official Federal Court Reporter,
do hereby certify that the foregoing transcript, Pages 1
through 26 inclusive, was recorded by me stenographically at
the time and place aforesaid in Criminal No. 23-10342-PBS,
United States of America v. Steve Waithe, and thereafter by me
reduced to typewriting and is a true and accurate record of the
proceedings.

Dated this 7th day of December, 2023.

/s/ Lee A. Marzilli

LEE A. MARZILLI, CRR
OFFICIAL COURT REPORTER